

J Eric Abakporo

ATTORNEY AT LAW

60 FOURTH AVENUE

BROOKLYN, NY 11217

EMAIL: eralaw@aol.com

TEL: (718) 222-0043/ FAX: (718) 222-0341

March 28, 2012

Hon. Viktor V. Pohorelsky
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East,
Brooklyn, NY 11201

RE: DISCOVERY LETTER MOTION TO VACATE

I came back to the United States yesterday, 27th March 2012 (*See Exhibit A*). I travelled out to Nigeria on February 20, 2012 (*See Exhibit B*). Based upon the above time lines I could not have seen nor received Defendant's Discovery Letter Motion. Thus, I could not respond to the Motion. While in Nigeria I had no internet service because I was in a remote part of the country and I fell ill.

Today, I received my letters and email and saw all that transpired.

- a) I did not receive the initial Discovery demand of the Defendants.

b) I saw Defendant Discovery demand for the first time today, March 28, 2012.

Based upon the above, I could not have responded to demands that I did not receive and of which I am unaware. I am not careless to overlook simple discovery demands, thus I will respond to them within the next week.

Defendant's Letter Motion is pedestrian and failed to satisfy the basic requirement of Federal Rules of Court procedure 37 (a)(1), "The Motion must include a certification that the movant has in good faith confirmed or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action".

Defendant failed to attach certification of good faith to their Motion as required by Rule 37. All that Defendant's attorney did was make a phone call that did not go through and mailed a letter that was not received.

There is no basis to award legal fees to Defendant, because they have done nothing to be paid. Any award by this court to Defendant is gratuitous. Even the so called Motion is merely a one and half page letter to the Court, which should not take a rookie Attorney more than 15 minutes to write.

In view of the foregoing I pray this honorable Court to vacate its Order dated March 16, 2012. My failure to respond to discovery demand or attend the Conference was neither purposeful nor out of disrespect to the Court, I was out of the country sick.

Respectfully submitted,

s/Eric Abakporo